


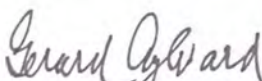
Respectfully submitted,

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that statements set forth in the Statement of Facts Section of this document are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

  
Gerard J. Aylward  
Dr. Gerard J. Aylward Orthodontics, P.C.

Respectfully submitted,

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that statements set forth in the Statement of Facts Section of this document are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

  
Gerard J. Aylward  
Dr. Gerard J. Aylward Orthodontics, P.C.

Respectfully submitted:

By: /s/ Carl M. Schultz  
One of the attorneys for Plaintiffs

Carl M. Schultz  
Holy & Schultz, LLC  
1 S 450 Summit Ave., Suite 260  
Oakbrook Terrace, Illinois 60181  
Phone: 630.286.6777  
E-Mail: [CarlS@holyandschultz.com](mailto:CarlS@holyandschultz.com)  
Cook County Firm ID: 61272

David Loughnane  
Loughnane Law LLC  
538 Milford Rd  
Deerfield, Illinois 60015  
(815) 900-0120  
E-Mail: [dave@loughlaw.com](mailto:dave@loughlaw.com)  
Cook County Firm ID: 25265

FILED DATE: 5/24/2023 3:49 PM 2023CH04986

No: 23 CH 04986

NOW COME the plaintiffs', through their attorneys, HOLY & SCHULTZ, and requests this Honorable Court grant it leave to file an amended complaint, and in support states as follows:

1. On 5/22/23 plaintiffs did file a verified complaint.
2. On 5/24/23 this Court entered an Order that the Complaint was facially deficient.
3. Plaintiffs seek to correct facial defects in the pleadings.
4. Attached as Exhibit A is the proposed Amended Verified Complaint.
5. The granting of this motion will not prejudice defendants.

Respectfully submitted,

1

One of the Attorneys for Plaintiffs

Carl M. Schultz  
Holy & Schultz, LLC  
1s450 Summit Ave., Suite 260  
Oakbrook Terrace, IL 60181  
(630) 286-6777  
[carls@holyandschultz.com](mailto:carls@holyandschultz.com)  
Attorney ID # 61272

# EXHIBIT

## A

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT - CHANCERY DIVISION**

GERARD AYLWARD and DR. GERARD J. )  
AYLWARD ORTHODONTICS, P.C., )

Plaintiffs, )

vs. )

GENERALHEALTH GROUP, INC., )  
GENERALHEALTHGROUP OF ILLINOIS, LLC, )  
LESLY LOPEZ a/k/a RUTH BERENSTEIN, and )  
MARK COHEN, as an employee or agent of )  
GENERALHEALTH GROUP, INC., )

Defendants. )

No: 2023 CH 04986

**AMENDED VERIFIED COMPLAINT**

NOW COMES Plaintiffs GERARD AYLWARD and DR. GERARD J. AYLWARD ORTHODONTICS, PC, by their attorneys Carl M. Schultz of HOLY & SCHULTZ, LLC, and Dave Louhgnane of LOUGHNANE LAW, and for their Amended Verified Complaint at Law, states as follows:

**JURISDICTION AND VENUE**

Jurisdiction and venue are appropriate in Cook County. The location of the orthodontic practice DR. GERARD J. AYLWARD ORTHODONTICS, P.C., is 222 N. Plum Grove Road, Palatine, Cook County, Illinois. The registered office for the defendant, Generalhealthgroup of Illinois, LLC, is also 222 N. Plum Grove Road, Palatine, Cook County, Illinois and the registered agent is defendant Lesly Lopez a/k/a Ruth Berenstein.

**COMMON STATEMENT OF FACTS**

1. Gerard J. Aylward is a licensed orthodontist in the state of Illinois.

**EXHIBIT  
A**

2. Dr. Gerard J. Aylward Orthodontics, P.C. is a professional corporation in the state of Illinois.

3. GeneralHealth Group, Inc., is a Florida Corporation with its principal place of business in New York.

4. Generalhealthgroup of Illinois, LLC, is a limited liability company.

5. At all times relevant to this Complaint, Lesly Lopez, a/ka/, Ruth Berenstein is the principal of GeneralHealth Group, Inc.

6. At all times relevant to this Complaint, Lesly Lopez, a/k/a, Ruth Berenstein is a member of Generalhealthgroup, of Illinois, LLC.

7. At all times relevant to this Complaint, Mark Cohen is the Director of Operations of GeneralHealth Group, Inc.

8. GeneralHealth Group, Inc., (“GHG”) first initiated contact with Dr. Aylward in early 2021.

9. On October 13, 2021, the parties entered into a Management Services Agreement (“MSA”). *(A true and correct copy of the MSA is attached as Exhibit 1)*

10. In return for the services provided and the Lease of acquired assets, Dr. GERARD J. AYLWARD ORTHODONTICS, P.C., agreed to pay a “Fee” in an amount equal to 30% of EBITDA on a quarterly basis. *(Ex. 1, Sec. 3. Fees)*

11. As part of the MSA, Plaintiffs and Defendants entered into an Asset Purchase Agreement *(A true and correct copy of the Asset Purchase Agreement is attached as Exhibit 2)*

12. Defendants agreed to pay Plaintiffs \$1,280,000.00 over 37 payments, the first \$500,000 in 36 equal monthly installments and the 37<sup>th</sup> a balloon payment of \$780,000. *(Ex. 2, Sec. 101)*

13. Lesly Lopez a/k/a Ruth Berenstein, signed a promissory note with respect to the Asset Purchase Agreement. (*Ex. 2, (Exhibit D to Exhibit 2 – Promissory Note)*).

14. A Common Stock Purchase Agreement, Bill of Sale and Assignment and Employment Agreement were also entered into between Dr. Aylward and GeneralHealth Group, Inc.

15. To date no payments have been made with respect to the Asset Purchase Agreement.

16. No consideration was ever given with respect to the Common Stock Purchase Agreement.

17. The services to be provided by defendants under the MSA, is outlined as an attached exhibit to the MSA, and in pertinent part includes providing financial services, such as: “Invoice processing, Invoice payments in accordance with vendor terms processed via check, electronic transfer or auto draft” (*Ex. 1, p. 9, para. D*)

18. Defendants undertook responsibility for the payroll of the orthodontic practice as referenced in the MSA: “Payroll administration for the Company staff.” (*Ex. 1, p. 10, para. E*)

19. The effective date of the transfer of control of operations of the orthodontic practice by defendants was on or about May 1, 2022.

**COUNT I**  
**ILLEGALITY – RECISSION**

20. Plaintiffs re-allege paragraphs 1 through 19 of Common Statement of Facts as paragraphs 1 through 19 of Count I.



21. Pursuant to the Management Services Agreement, plaintiffs agreed to pay a “Fee” to GeneralHealth Group, Inc., in an amount equal to 30% of EBITDA (earnings before interest, taxes, depreciation and amortization) on a quarterly basis.

22. The Fee clause in the Management Services Agreement is a fee split between a licensed orthodontic practice with a licensed orthodontist and a corporation without an orthodontic license.

23. The Management Services Agreement, Asset Purchase Agreement, and Stock Purchase Agreement between plaintiffs and defendants creates a corporate practice of orthodontic dentistry.

24. The effect of the agreements is that defendants’ role in the orthodontic practice is dominating and constitutes the impermissible corporate practice of orthodontics.

25. The fee sharing agreement in the Management Services Agreement violates the corporate practice of dentistry rules. Illinois Dental Practice Act (225 ILCS 25/44), Illinois Professional Practice Act (805 ILCS 10/3.4, Illinois Professional Limited Liability Company Practice Act (805 ILCS 185/13) and prevailing caselaw.

26. The parties can be returned to their pre-agreement status without prejudice to either party.

WHEREFORE, Plaintiffs’, GERARD J. AYLWARD AND DR. GERARD J. AYLWARD ORTHODONTICS, PC, requests that this Court issue a ruling that the Agreements between plaintiffs and defendant GeneralHealth Group, Inc., are illegal and therefore void and unenforceable and an injunction that the agreements are rescinded returning the parties to the status of the parties prior to the agreements, and for all or any additional relief this Court deems just and appropriate.

**COUNT II**  
**BREACH OF FIDUCIARY DUTY**

26. Plaintiffs re-allege paragraphs 1 through 19 of Common Statement of Facts as set forth as paragraphs 1 through 19 of Count II

27. Lesly Lopez a/k/a Ruth Berenstein, without the consent of plaintiffs created a new entity, Generalhealthgroup of Illinois, LLC, and registered this entity at the address of the orthodontic practice in Palatine, Illinois.

28. On information and belief, the entity Generalhealthgroup of Illinois, LLC is being used to receive the orthodontic practice revenue on behalf of GeneralHealth Group, Inc.

29. The defendants unilateral control of the practice, and including the responsibility to pay bills, pay wages and enter into leases, created a fiduciary relationship between plaintiffs and defendants.

30. GeneralHealth Group, Inc., and Generealhealthgroup of Illinois, LLC has complete access to Dr. Gerard J. Aylward Orthodontics, PC's assets and revenues.

31. Specifically, GeneralHealth Group, Inc., and Generealhealthgroup of Illinois, LLC, was entrusted with accounting and bookkeeping, collecting payments from patients and third-party payors, paying vendor bills and wages.

32. Defendant Lesly Lopez a/k/a Ruth Berenstein acting as a principal for GeneralhHealth Group, Inc., and member of Generalhealthgroup of Illinois, LLC was entrusted with accounting and bookkeeping, collecting payments from patients and third-party payors, paying vendor bills and wages.

33. Defendant Mark Cohen acting within the scope and agency of his position as Director of Operations of GeneralHealth Group, Inc., as entrusted with accounting and

bookkeeping, collecting payments from patients and third-party payors, paying vendor bills and wages.

34. Defendants required that Dr. Gerard J. Aylward Orthodontics, PC, deposit revenues into an account controlled by defendants.

35. Defendants breached their fiduciary duty by:

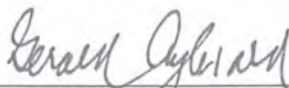
- a. failing to make payments for vendor bills;
- b. failing to make payments for rent of the orthodontic practice space in Palatine, Illinois;
- c. failing to make timely payments for wages of orthodontic practice staff, independent contractor physicians and Gerard J. Aylward; and
- d. failing to establish systems to ensure that all third-party payors/insurance companies would transmit payment for agreed upon covered services.

36. As a direct and proximate result of defendants' breach of fiduciary duties, plaintiffs incur and will continue to incur significant damages both monetarily and to reputation, an amount to be proven at trial.

WHEREFORE, Plaintiffs Gerard J. Aylward and Dr. Gerard J. Aylward Orthodontics, P.C., pray for judgment in their favor and against defendants in the form of equitable relief in the form of (1) compelling defendants to allow plaintiffs to assume the lease for the Palatine orthodontic practice office; (2) compelling defendants to allow plaintiffs to assume control over an operating checking account to receive patient and third party payor payments and to pay all necessary current and outstanding bills and wages; (3) damages for breach of fiduciary duty in an amount to be determined at trial; and (4) such other relief as the Court deems just and proper.

Respectfully submitted,

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that statements set forth in this instrument (Amended Verified Complaint) are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.



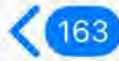
Gerard J. Aylward  
Dr. Gerard J. Aylward Orthodontics, P.C.

Respectfully submitted and  
Approved as to form,

By: /s/ Carl M. Schultz  
One of the attorneys for Plaintiffs

Carl M. Schultz  
Holy & Schultz, LLC  
1 S 450 Summit Ave., Suite 260  
Oakbrook Terrace, Illinois 60181  
Phone: 630.286.6777  
E-Mail: [CarlS@hollyandschultz.com](mailto:CarlS@hollyandschultz.com)  
Cook County Firm ID: 61272

David Loughnane  
Loughnane Law LLC  
538 Milford Rd  
Deerfield, Illinois 60015  
(815) 900-0120  
E-Mail: [dave@loughlaw.com](mailto:dave@loughlaw.com)  
Cook County Firm ID: 25265



Linda

account by Zelle and it would show pending immediately. Also I do not know if Zelle for business accounts has a daily or monthly transfer limit.

2. Electronic funds transfer is now being set up to use but it will take a minimum of 2 or 3 days for that system to finalize in our business account.

3. In order for the cash to show cleared tomorrow, and without a Chase Zelle account being set up, the banker I spoke with suggested that the most certain way to get the money into the account tomorrow is that I go to PNC, get a cashiers check, and take it to Chase and it will show as cash deposited immediately. I think this is what I should do so you have it by early afternoon.

Your thoughts?

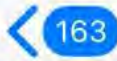


Text Message - SMS





1:24



Linda

Jun 12, 2022 at 11:20 AM

Any luck?

Just off a long call with PNC Business Banking. See alternatives #3 or #1 for you to have your \$11,500 tomorrow.

1. You or Mark need to set up a Zelle account online with that Chase account using one of your phone numbers and emails. Let me know which person and number and e-mail is on the Zelle account.

I can then try to set you up in our system to send to your Chase account by Zelle and it would show pending immediately. Also I do not know if Zelle for business accounts has a daily or monthly transfer limit.

2. Electronic funds transfer is now being set up to use but it will take



Text Message - SMS





Linda

Jun 11, 2022 at 3:12 PM

So we went to PNC to ach \$11,500 but their wire system got shut down for the weekend for servicing.

Monday first thing I will go back and get it done. This total includes \$7300. May 4100. June so far

06/13/2022

Pending

ONLINE BANKING TRANSFER DE... **\$7,300.00**  
06/13/2022 Pending

ONLINE BANKING TRANSFER DE... **\$4,131.07**  
06/13/2022 Pending

ONLINE BANKING TRANSFER **-\$370.00**  
06/11/2022 Pending

**POSTED TRANSACTIONS**

SYNETICSGRP EFT AUTO-DRAFT A... **\$126.67**  
06/10/2022 \$371.17

BILL.COM LLC BILLING CORPORAT... **-\$78.75**  
06/09/2022 \$244.50

ONLINE TRANSFER TO XXXXX7... **-\$3,767.62**  
06/08/2022 \$323.25

ORTHOSYNETIC INC PFS BULK A... **\$3,767.62**  
06/08/2022 \$4,090.87

COMPACT BUSINESS WEB PAY C... **\$110.00**



Text Message - SMS



4:22

LTE 

< 57



Linda >



It is very clear that at least 9000 of our revenue is with you. On top of that, it's assumed that the remaining 20,000 is also EFT to yourself. Until and unless I see statements, I will not believe here say.

Please ACH at LEAST the 9,000 today to avoid any layoffs and disruptions to payroll.

If I don't receive an ACH today, I will fly down along with Dr Meyer and will be laying off a few employees.

We do our business with honesty , transparency and integrity and we hope for the same.

It's now 10Am CT if I don't



iMessage





4:22

LTE

< 57



Linda



Thank you for your help.

Thanks

Why are you talking about an ACH? All there is in any business account is about \$3800

And another 3000 in our second business account

Linda,

It is very clear that at least 9000 of our revenue is with you. On top of that, it's assumed that the remaining 20,000 is also EFT to yourself. Until and unless I see statements, I will not believe here say.

Please ACH at LEAST the 9,000 today to avoid any layoffs and disruptions to payroll.



iMessage





Ruth Berenstein <ruth.berenstein@generalhealthgroup.com>

---

## Fwd: Chicagoland 4 Braces - Report

3 messages

---

**Mark Cohen** <mark.cohen@generalhealthgroup.com>

Sat, Jun 11, 2022 at 10:49 AM

To: Linda Aylward <leafygreenlinda@me.com>, gerry aylward <gerryaylward7@gmail.com>

Cc: Mark Cohen <mark.cohen@generalhealthgroup.com>, Lesly Lopez <lesly.lopez@generalhealthgroup.com>

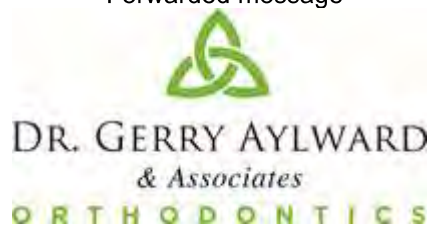
Hi Linda,

There is about \$29,500 in payments missing from last month's revenue.

Can you share the business bank statements for the month of May?

Are the insurance credit cards and EFTs still going in your old business account?

----- Forwarded message -----



222 N Plum Grove Rd. Palatine IL. 60067

847-358-9000 phone 847-358-9015 fax

[palatine@chicagoland4braces.com](mailto:palatine@chicagoland4braces.com) email

<http://www.chicagoland4braces.com>

Find us on Facebook

<https://www.facebook.com/DrAylwardOrthodontics/>



Sender notified by  
Mailtrack



**Month End summary May 2022.pdf**

152K

**Mark Cohen** <mark.cohen@generalhealthgroup.com>

Sat, Jun 11, 2022 at 8:09 PM

To: Linda Aylward <leafygreenlinda@me.com>, "Dr. Gerard Aylward's Office" <palatine@chicagoland4braces.com>

Cc: Lesly Lopez <lesly.lopez@generalhealthgroup.com>, gerry aylward <gerryaylward7@gmail.com>

Thank you Megan!

Linda, there is at least 9,000 (**confirmed**) of May's revenue in your bank account. The remainder 20,000 must also be in your bank account because OSI does not have any other bank account on file. Please deposit that by today as well.

Also send me a statement for the month of May. If you have any difficulties getting access to the statements, let me know and I will walk you through it on PNC online banking.

Please deposit this using ACH or Wire below today and send me a confirmation to avoid disruptions and stops to payroll this week.

**FOR ACH PAYMENTS:**

Account number 817722512

Routing number 021202337

**FOR WIRE PAYMENTS:**

	817722512	Account number
Routing number	021000021	

----- Forwarded message -----

From: **Dr. Gerard Aylward's Office** <palatine@chicagoland4braces.com>

Date: Sat, 11 Jun 2022 at 09:31

Subject: Re: Chicagoland 4 Braces - Report

To: Mark Cohen <mark.cohen@generalhealthgroup.com>

Good morning Mark,

I received the attached TSYS statement in the office yesterday. This is for credit cards processed in May using the old CC merch services. \$9333.51, with fees deducted of \$366.54. There may be a handful of patients in there, but I believe the bulk of these would be insurance payments sent in with a virtual CC to process. This money went directly to OSI and should have been paid into Dr. A's account in bulk. It will be interesting if we can make it match with the bank statement I will try to get and the EOBs I am waiting for.

thanks,  
Megan

---

**From:** Mark Cohen <[mark.cohen@generalhealthgroup.com](mailto:mark.cohen@generalhealthgroup.com)>  
**Sent:** Friday, June 10, 2022 1:12 PM  
**To:** Dr. Gerard Aylward's Office <[palatine@chicagoland4braces.com](mailto:palatine@chicagoland4braces.com)>  
**Cc:** Mark Cohen <[mark.cohen@generalhealthgroup.com](mailto:mark.cohen@generalhealthgroup.com)>  
**Subject:** Re: Chicagoland 4 Braces - Report

Thank you Megan. It's really important that we figure these out asap.

Is OSI responding at all? How many days has it been roughly? Did you call them as well?



Sender notified by  
Mailtrack

On Fri, 10 Jun 2022 at 10:10, Dr. Gerard Aylward's Office <[palatine@chicagoland4braces.com](mailto:palatine@chicagoland4braces.com)> wrote:

Good morning Mark,

Yes I did, sorry for the delay in response. I put in a request for some info on insurance payments from OSI, which I am still waiting for. I want to see how accurate the insurance numbers are.

Some of the payments received in May were not posted into Orthotrac in May but in June. This is because of the switch to swipe simple and the Tsys issue.

I am still working on more accurate numbers. For example, in the detail, I am only seeing 1 insurance check for \$156 posted. But the detail shows 118 credit cards processed for 39,592.53. More than I ran, so I am assuming they were virtual credit cards from insurance companies. The reposted payments in the amount of 1467.08 (7 transactions) could also be insurance. Hoping the EOBs coming from OSI will help clear things up.

It will be so much easier when ALL the payments from patients and carriers are coming directly to us.

I am off today, but working tomorrow 7:30-12:30 with patients. I will keep working on the numbers next week.

Thanks,  
Megan

---

**From:** Mark Cohen <[mark.cohen@generalhealthgroup.com](mailto:mark.cohen@generalhealthgroup.com)>  
**Sent:** Friday, June 10, 2022 7:47 AM  
**To:** Dr. Gerard Aylward's Office <[palatine@chicagoland4braces.com](mailto:palatine@chicagoland4braces.com)>  
**Cc:** Mark Cohen <[mark.cohen@generalhealthgroup.com](mailto:mark.cohen@generalhealthgroup.com)>  
**Subject:** Re: Chicagoland 4 Braces - Report

Hi Megan,

Did you get the email below?



Sender notified by  
[Mailtrack](#)

On Wed, 8 Jun 2022 at 13:41, Mark Cohen <[mark.cohen@generalhealthgroup.com](mailto:mark.cohen@generalhealthgroup.com)> wrote:

Ok so I see payment of 63,840

and in the bank account it's probably.... 40,000-ish.

So can we get a breakdown as to what was insurance and what was debit /credit / cash?



Sender notified by  
[Mailtrack](#)

On Wed, 8 Jun 2022 at 12:09, Dr. Gerard Aylward's Office <[palatine@chicagoland4braces.com](mailto:palatine@chicagoland4braces.com)> wrote:

Hi Mark,

Attached is the May Summary from OrthoTrac. Keep in mind that the payment posting errors represent the switch over to Swipe Simple and the issue I had with TSys and OrthoTrac.

We had 16 starts in May - not bad for the end of the school year craziness. We also have 27 new patient consultations scheduled for June. I will create a form to track our batting average at huddle. I will include new consultations and look at recall appointments as well. Help keep the staff invested into creating starts whenever possible.

Let me know if I can run any detail reports for any day in May. Or if you need detail on a payment or deposit.

Thanks,

Megan



222 N Plum Grove Rd. Palatine IL. 60067

847-358-9000 phone 847-358-9015 fax

[palatine@chicagoland4braces.com](mailto:palatine@chicagoland4braces.com) email

<http://www.chicagoland4braces.com>

Find us on Facebook

<https://www.facebook.com/DrAylwardOrthodontics/>



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Mailtrack



**TSYS AYLWARD MAY.pdf**  
2080K

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**Linda Aylward** <[leafygreenlinda@me.com](mailto:leafygreenlinda@me.com)>

Sat, Jun 11, 2022 at 9:22 PM

To: Mark Cohen <[mark.cohen@generalhealthgroup.com](mailto:mark.cohen@generalhealthgroup.com)>

Cc: "Dr. Gerard Aylward's Office" <[palatine@chicagoland4braces.com](mailto:palatine@chicagoland4braces.com)>, Lesly Lopez <[lesly.lopez@generalhealthgroup.com](mailto:lesly.lopez@generalhealthgroup.com)>, gerry aylward <[gerryaylward7@gmail.com](mailto:gerryaylward7@gmail.com)>

Hi Mark and Lesly,

As I told Lesly, we used approximately \$9000 in May revenue (from Feb, March and April insurance payments due to the practice before the transition) to pay down the business credit card and a couple of other items that were debited from that business account.

We have no idea where the \$20,000 from OSI is, nor is it in either of our business accounts. You will see a number of transfers back and forth between the 2 business accounts, so the total deposited is not accurate. Also we deposited about \$8000 from our credit card line of credit to pay for the early May payroll.

We currently can account for about \$7000 cash that is from June deposits from OSI. We are happy to ACH that amount to you today, but it is from June.

I have attached the May statements.